

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

VICTOR M. RODRIGUEZ,
Plaintiff,

v.

UNITED STATES,
Defendant.

No. 08-CV-1074
(LEK/DRH)

**DAVID R. HOMER
U.S. MAGISTRATE JUDGE**

REPORT-RECOMMENDATION AND ORDER

The complaint in the above-captioned case was filed in this district on October 9, 2008. Docket No. 1. Plaintiff, proceeding pro se, paid the filing fee. Id. A summons was issued on the same date for service of process upon the defendant. Docket No. 3. There is no indication in the docket of this case, however, that the defendant has yet been served with the summons or complaint.¹

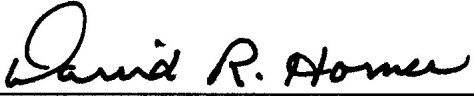
Fed. R. Civ. P. 4(m) requires that a complaint be served upon a defendant within 120 days after the complaint is filed or the complaint may be dismissed as to any unserved defendant without prejudice. See also N.D.N.Y.L.R. 4.1(b). The complaint here was filed on October 9, 2008. More than 120 days have passed since either the complaint was filed or the summons was issued and defendant has yet to be served. Accordingly, it is hereby

¹A conference was scheduled for March 24, 2009 with plaintiff at which it was the intent of the undersigned to explain to plaintiff the requirements for completing service on defendant. Plaintiff was given notice of the conference. See Docket entries dated 2/10/08 and 3/19/08. At the time of the conference, plaintiff was called at the telephone number he had provided and at which he had previously been contacted. Plaintiff failed to answer or otherwise appear for the conference. It is further noted that plaintiff received a copy of the Pro Se Handbook which, inter alia, explains the requirements for service of process. See Docket No. 4.

RECOMMENDED that the complaint be **DISMISSED** without prejudice in accordance with Fed. R. Civ. P. 4(m) and N.D.N.Y.L.R. 4.1(b).

Pursuant to 28 U.S.C. § 636(b)(1), the parties have ten days within which to file written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court. **FAILURE TO OBJECT TO THIS REPORT WITHIN TEN DAYS WILL PRECLUDE APPELLATE REVIEW.** Roldan v. Racette, 984 F.2d 85 (2d Cir. 1993) (citing Small v. Secretary of HHS, 892 F.2d 15 (2d Cir. 1989)); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

DATED: March 24, 2009
Albany, New York



United States Magistrate Judge